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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
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2007 JAN 24 A 8: 56

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
PERKINS MOUNTAIN UTILITY COMPANY  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. SW-20379A-05-0489

IN THE MATTER OF THE APPLICATION OF  
PERKINS MOUNTAIN WATER COMPANY  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. W-20380A-05-0490

**NOTICE OF FILING**

Staff of the Arizona Corporation Commission ("Staff") hereby files its Responses to Perkins Mountain Water Company and Perkins Mountains Utility Company's Third Set of Data Requests in the above-referenced matter.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of January, 2007.

Keith A. Layton  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

Original and fifteen (15) copies  
of the foregoing were filed this  
24<sup>th</sup> day of January, 2007 with:

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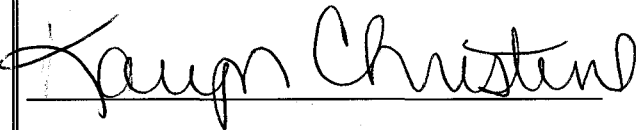
JAN 24 2007

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1 Copies of the foregoing mailed  
this 24<sup>th</sup> day of January, 2007 to:

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**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE



BRIAN C. McNEIL  
Executive Director

**ARIZONA CORPORATION COMMISSION**

January 22, 2007

*Via E-mail and United States Mail*

Kimberly A. Grouse  
Snell & Wilmer LLP  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004-2202

Re: Staff's Responses to Perkins Mountain Water Company and Perkins Mountains Utility Company's Third Set of Data Requests - Docket No. W-0380A-05-0490 and SW-20379A-05-0489

Dear Ms. Grouse:

Enclosed are Staff's responses to Perkins Mountain Water Company and Perkins Mountains Utility Company's Third Set of Data Requests to the Arizona Corporation Commission Staff in the above-referenced matter.

Please do not hesitate to contact me if you have any questions regarding the attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith A. Layton".

Keith A. Layton  
Attorney, Legal Division  
(602) 542-3402

KAL:klc

Enclosure

cc: Blessing Chukwu (w/ Enclosure)  
Linda Jaress (w/ Enclosure)

**ARIZONA CORPORATION COMMISSION STAFF'S RESPONSES TO  
PERKINS MOUNTAIN WATER COMPANY AND PERKINS MOUNTAIN  
UTILITY COMPANY'S THIRD SET OF DATA REQUESTS  
DOCKET NOS. W-0380A-05-0490 AND SW-20379A-05-0489  
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1. Staff is recommending that Perkins Mountain Water Company ("PMWC") provide an irrevocable letter of credit ("LOC") or a performance bond of \$2.5 million "which is adequate to secure the first four years of estimated operating expenses." (Addendum to Staff Report at p. 8)

- a. What is Staff's basis for using four years of estimated operating expenses to establish the amount of the LOC or performance bond?

**The purpose of a bond is to provide some assurance to the Commission and the customers that there will be funds available to operate the utility in the case of bankruptcy or other financial crisis or disaster. There are several bases under which the size of the bond could be determined including the number of customers, the value of the plant, operating expenses for one year, or cumulative operating expenses. However, Staff believes an amount of bond equal to four years of operating expenses is appropriate for this case. This amount should be sufficient to operate the company, make necessary repairs and install necessary plant during the course of whatever financial crisis the company is in.**

- b. Has Staff recommended an LOC or performance bond equal to four years estimated operating expenses in any other new water company CC&N case?

**Staff does not know if Staff has ever recommended a LOC or performance bond equal to four years operating income. Staff is unaware of any recent similar recommendation.**

- c. Is the recommendation of an LOC or performance bond a standard Staff recommendation in new water company CC&N cases?

**No, it is not a standard Staff recommendation. However, in several dockets in the recent past, the Commission has ordered performance bonds for new water and/or sewer utilities.**

- d. Does the Commission have a written policy on requiring LOCs or performance bonds for new public service corporations?

**Staff is unaware of a written policy of the Commission regarding LOCs or performance bonds. However, the Commission has required performance bonds for every new telecommunications utility for**

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many years and has ordered several new water and sewer companies to provide performance bonds in the recent past.

- e. What was the basis for setting the amount of the performance bonds required in Decisions 68235, 68236 and 68237 (referenced at page 7 of the Addendum to Staff Report)?

**Staff does not know the basis for setting the amount of the performance bonds required in Decisions 68235, 68236 and 68237. The requirement for performance bonds and their amount was set by the Commission.**

- f. In the case of PMWC, what circumstances or events would trigger the Commission's right to access the LOC or performance bond?

**The bond funds would be accessed by the Commission when the Commission finds that the Companies are not providing adequate service, likely through an Order to Show Cause proceeding.**

- g. Please identify the docket numbers/decision numbers of the last three new water company CC&N cases in which Staff has recommended an LOC or performance bond.

**Staff is unaware of three new water company CC&N cases where it has recommended an LOC or performance bond. However, Staff recommended a performance bond in Docket Nos. SW-03575A-03-0586 and W-03576A-03-0586 resulting in Decision No. 67240.**

2. Staff is recommending that PMWC finance at least 50% of its utility plant with equity. (Addendum to Staff Report at p. 8)

- a. Does Staff have a standard recommendation regarding financing utility plant with equity in new water company CC&N cases?

**Yes.**

- b. If the answer to the preceding question 2(a) is yes, what is the standard recommendation?

**Generally, Staff recommends a capital structure for a new water utility consisting of equity of at least 50% (including advances in the capital structure).**

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- c. Does Staff or the Commission have a written policy on equity financing for new water companies? If yes, please provide a copy of the policy.

**See Staff Report in Docket No. W-00000C-06-0149.**

- d. Has Staff required both an LOC/performance bond and 50% equity financing for a new water company in any other new CC&N case? If yes, please provide the name(s) of the water company(ies) and the docket number(s).

**Staff is not aware of such a recommendation.**

- e. Please identify the docket numbers/decision numbers of the last three new water company CC&N cases in which Staff recommended that the water company finance at least 50% of its plant with equity.

**In Green Acres Water Company, Docket No. W-20431-05-0839 Staff recommended equity of 92.45% for water. In Woodruff Water Company, Docket No. W-04264A-04-0438, Staff recommended equity of 48%.**

- f. At page 6 of the Addendum to Staff Report, Staff states "[i]t is Staff's practice to recommend, and the Commission has adopted, specific capital structures for new utilities." Please identify the docket numbers/decision numbers of the three most recent new water company CC&N cases where Staff recommended a specific capital structure.

**See Response to the previous question.**

3. What are the factors Staff uses to assess the financial strength of the investor of a water or sewer company?

**Only under unusual circumstances does Staff assess the financial strength of an investor in a water or sewer company. In the case of Perkins, Staff reviewed the financial statements of certain Perkins affiliates to determine if they were solvent and reviewed the ratings by Moody's of a Perkins affiliate for the same reason.**

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4. Staff states that "[i]n this case, it is the tenor and sheer number of the lawsuits that makes them unusual." (Addendum to Staff Report at p. 7)
- a. In evaluating an applicant for a CC&N, is it a regular practice of Staff to research the existence of lawsuits involving the applicant or its shareholders?

**The ACC is required by Arizona Statutes § 40-281 et seq. to investigate all applicants for a CC&N and to issue a CC&N only upon a showing that the issuance to a particular applicant would serve the public interest. In determining whether or not the issuance of a CC&N to a particular applicant is in the public interest, Staff considers whether the applicant is a fit and proper entity to own and operate a water and/or wastewater utility. It is a regular practice of Commission Staff in the course of investigating an applicant for a CC&N to research information available to it from whatever source derived including but not limited to the existence of lawsuits involving the applicant or its shareholders.**

- b. In Staff's experience, what is the expected or "usual" number of lawsuits in a "business on the scale that Mr. Rhodes does?"

**Each case is based on its own merits. Staff believes that the ultimate obligation of the Commission is to protect the public interest.**

5. Staff has recommended the inclusion of property owned by Sports Entertainment (an entity that is not related to or affiliated with PMWC, Rhodes Homes or Jim Rhodes) in the requested CC&N area. (Addendum to Staff Report at p. 11, recommendation 2). Please confirm that Sports Entertainment is responsible for obtaining its own ADWR Analysis of Adequate Water Supply for its property.

**Obtaining an ADWR Analysis of Adequate Water Supply is an obligation of each particular subdivision development. Staff usually recommends that a source of adequate water be demonstrated prior to recommending approval of a CC&N.**

6. A.R.S. §40-282(D) states: "if the commission makes an order preliminary to the issuance of the certificate, upon presentation to the commission of evidence that the franchise or permission has been secured by the corporation, the commission shall issue the certificate." (Emphasis added). In the Addendum to Staff Report, Staff recommends that "[t]he Commission should

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schedule this item for a vote to grant the CC&N as soon as possible after Staff's filing that confirms PMWC's compliance with items 2, 3, 4, and 5." Staff's reference to a "vote to grant the CC&N" may be read to imply that the Commission has the discretion to deny issuance of a CC&N to PMWC even if PMWC has timely satisfied all conditions of the order preliminary. Is it Staff's interpretation of A.R.S. §40-282(D) that the Commission must issue a CC&N to PMWC once PMWC has timely satisfied all conditions of the order preliminary?

**It is a legal question which is more appropriately addressed in legal argument or legal briefing.**

7. Staff is recommending that Perkins Mountain Utility Company ("PMUC") provide an irrevocable letter of credit or a performance bond of \$2.5 million "which is adequate to secure the first four years of estimated operating expenses." (Addendum to Staff Report at p. 8)

- a. What is Staff's basis for using four years of estimated operating expenses to establish the amount of the LOC or performance bond?

**See response to 1.a.**

- b. Has Staff recommended an LOC or performance bond equal to four years estimated operating expenses in any other new sewer company CC&N case?

**See response to 1.b**

- c. Is the recommendation of an LOC or performance bond a standard Staff recommendation in new sewer company CC&N cases?

**See response to 1.c.**

- d. In the case of PMUC, what circumstances or events would trigger the Commission's right to access the LOC or performance bond?

**The bond funds would be accessed by the Commission when the Commission finds that the Companies are not providing adequate service, likely through an Order to Show Cause proceeding.**



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- e. Please identify the docket numbers/decision numbers of the last three new sewer company CC&N cases in which Staff has recommended an LOC or performance bond.

**Staff is unaware of three new sewer company CC&N cases where it has recommended an LOC or performance bond. However, Staff recommended a performance bond in Docket Nos. SW-03575A-03-0586 and W-03576A-03-058 resulting in Decision No. 67240.**

8. Staff is recommending that PMUC finance at least 50% of its utility plant with equity. (Addendum to Staff Report at p. 8)

- a. Does Staff have a standard recommendation regarding financing utility plant with equity in new sewer company CC&N cases?

**Yes.**

- b. If the answer to the preceding question 2(a) is yes, what is the standard recommendation?

**Generally, Staff recommends a capital structure for a new sewer utility consisting of equity of at least 50% (including advances in the capital structure).**

- c. Does Staff or the Commission have a written policy on equity financing for new sewer companies? If yes, please provide a copy of the policy.

**Neither Staff nor the Commission has a written policy on equity financing for new sewer companies.**

- d. Has Staff required both an LOC/performance bond and 50% equity financing for a new sewer company in any other new CC&N case? If yes, please provide the name(s) of the sewer company(ies) and the docket number(s).

**Staff is not aware of such a recommendation.**

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- e. Please identify the docket numbers/decision numbers of the last three new sewer company CC&N cases in which Staff recommended that the sewer company finance at least 50% of its plant with equity.

**Coronado Utilities, Inc. SW-04305A-05-0086, Balterra Sewer Corp. SW-20403A-05-0586 and Entrada del Oro Sewer Company, Docket No. SW-04316A-05-0371.**

- f. At page 6 of the Addendum to Staff Report, Staff states "[i]t is Staff's practice to recommend, and the Commission has adopted, specific capital structures for new utilities." Please identify the docket numbers/decision numbers of the three most recent new sewer company CC&N cases where Staff recommended a specific capital structure.

**See Response to the previous question.**

9. A.R.S. §40-282(D) states: "if the commission makes an order preliminary to the issuance of the certificate, upon presentation to the commission of evidence that the franchise or permission has been secured by the corporation, the commission shall issue the certificate." (Emphasis added). In the Addendum to Staff Report, Staff recommends that "[t]he Commission should schedule this item for a vote to grant the CC&N as soon as possible after Staff's filing that confirms PMUC's compliance with items 2, 3, 4, 5, 6, and 7 has transpired." Staff's reference to a "vote to grant the CC&N" may be read to imply that the Commission has the discretion to deny issuance of a CC&N to PMUC even if PMUC has timely satisfied all conditions of the order preliminary. Is it Staff's interpretation of A.R.S. §40-282(D) that the Commission must issue a CC&N to PMUC once PMUC has timely satisfied all conditions of the order preliminary?

**It is a legal question which is more appropriately addressed in legal argument or legal briefing.**

10. The Staff Acknowledgement to the Addendum to Staff Report dated December 15, 2006, states that the Addendum was the responsibility of Blessing Chukwu, Marlin Scott, Jr., and Linda Jaress. Please identify all other members of Utilities Division Staff who reviewed or contributed to the preparation of the Addendum.

**The Addendum to Staff Report went through an internal review process, which includes review by the Legal Division and various Utilities Division's Sections including the Administrative Section, the Consumer**

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Services Section, the Engineering Section, the Compliance Section, the Finance and Regulatory Analysis Section, and the Director's Office. Blessing Chukwu, Marlin Scott, Jr., and Linda Jaress were the primary people that were responsible for the Addendum to the Staff Report.